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OFFICE OF PETITIONS

In re Patent No. 7720076	: DECISION ON REQUEST
Dobbins et al.	: FOR
Issue Date: 05/18/2010	: RECONSIDERATION OF
Application No. 10/791655	: PATENT TERM ADJUSTMENT
Filed: 03/01/2004	:
Atty Docket No.	:
E2003-701430	:

This is a decision on the petition filed on March 24, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred eight (1408) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of one thousand three hundred ninety-two (1392) days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on March 2, 2007, and ends on October 28, 2009, the day before the RCE was filed, and is 972, not 973 days. See 35 U.S.C. 154(b)(1)(B)(i). Considering the overlapping periods of 469 days, beginning on March 2, 2007, and ending on June 12, 2008, the date the first Office action was mailed, and 4 days, beginning on September 27, 2009, the day after the date four months after the date a reply was filed, and ending on September 30, 2009, the date a notice of allowance was mailed in response to the reply, the "B" delay is 499 (972 - 473 (469 + 4)) days.

Further, petitioners have failed to include the 15-day period of reduction for applicant delay in connection with the filing of an amendment filed after the mailing of the notice of allowance.

37 CFR 1.704(c)(10) states, that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

On February 24, 2010, an amendment was filed after the mailing of a notice of allowance. On March 10, 2010, 15 days after the filing of the amendment filed after the mailing of the notice of allowance, the Office mailed a letter in response to the notice. Accordingly, a 15 day period of reduction for applicant delay is warranted.

Accordingly, no change will be made to the patent term adjustment of 1392 (1142 days Office delay + 499 days three years delay – 249 (234 + 15) days of applicant delay) days indicated on the issued patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
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